

# **EXHIBIT D**

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

JAMES HAYDEN,

Plaintiff,

v.

2K GAMES, INC. and TAKE-TWO  
INTERACTIVE SOFTWARE, INC.,

Defendants.

CASE NO. 1:17-cv-02635-CAB

JUDGE CHRISTOPHER A. BOYKO

**DEFENDANTS 2K GAMES, INC. AND TAKE-TWO INTERACTIVE  
SOFTWARE, INC.'S PROPOSED JURY VERDICT FORM**

**JURY VERDICT FORM**

**Plaintiff's Claims**

1. Do you find that Plaintiff owns valid copyrights in the following works?

	<b>Yes</b> (for Plaintiff)	<b>No</b> (for Take-Two)
Gloria (on LeBron James's arm)	_____	_____
Lion (on LeBron James's chest)	_____	_____
Shoulder Stars (on LeBron James's arm)	_____	_____
Fire (on Danny Green's arm)	_____	_____
Scroll (on Danny Green's arm)	_____	_____
Brother's Keeper (on Tristan Thompson's chest)	_____	_____

*If you answered "NO" to each part of **Question 1**, skip the remaining questions, proceed to the end of the verdict form, and execute the signature page.*

*If you answered "YES" to any part of **Question 1**, proceed to **Question 2**.*

2. For any of the works for which you selected “Yes” in Question 1, do you find that Plaintiff proved by a preponderance of the evidence that protectable expression in that work is substantially similar to *NBA 2K*?

	Yes (for Plaintiff)	No (for Take-Two)
Gloria (on LeBron James’s arm)	_____	_____
Lion (on LeBron James’s chest)	_____	_____
Shoulder Stars (on LeBron James’s arm)	_____	_____
Fire (on Danny Green’s arm)	_____	_____
Scroll (on Danny Green’s arm)	_____	_____
Brother’s Keeper (on Tristan Thompson’s chest)	_____	_____

*If you answered “NO” to each part of **Question 2** for which you had answered “YES” to **Question 1**, skip the remaining questions, proceed to the end of the verdict form, and execute the signature page.*

*If you answered “YES” to any part of **Question 2**, proceed to **Question 3**.*

3. Do you find that the Tattoos were authored by the NBA Players?

Yes \_\_\_\_\_ (for Take-Two)

No \_\_\_\_\_ (for Plaintiff)

*If you answered “YES” to **Question 3**, skip the remaining questions, proceed to the end of the verdict form, and execute the signature page.*

*If you answered “NO” to **Question 3**, proceed to **Question 4**.*

4. For the works for which you selected “Yes” in response to both Questions 1 and 2, do you find that Plaintiff proved by a preponderance of the evidence his vicarious copyright infringement claim?

Yes \_\_\_\_\_ (for Plaintiff)

No \_\_\_\_\_ (for Take-Two)

*Proceed to **Question 5.***

5. For the works for which you selected “Yes” in response to both Questions 1 and 2, do you find that Plaintiff proved by a preponderance of the evidence his contributory copyright infringement claim?

Yes \_\_\_\_\_ (for Plaintiff)

No \_\_\_\_\_ (for Take-Two)

*Proceed to **Question 6.***

**Fair Use**

6. Do you find that *NBA 2K* is a new work with a different or further purpose than the Tattoos Plaintiff inked?

Yes \_\_\_\_\_ (for Take-Two)

No \_\_\_\_\_ (for Plaintiff)

*Proceed to **Question 7.***

7. Do you find that, in *NBA 2K*, the expressive value of the Tattoos Plaintiff inked is minimized by combining them with other sounds and visual elements?

Yes \_\_\_\_\_ (for Take-Two)

No \_\_\_\_\_ (for Plaintiff)

*Proceed to **Question 8.***

8. Do you find that the Tattoos Plaintiff inked are a fraction of the total file size of *NBA 2K*?

Yes \_\_\_\_\_ (for Take-Two)

No \_\_\_\_\_ (for Plaintiff)

*Proceed to **Question 9.***

9. Do you find that the ordinary purchaser buys *NBA 2K* for the Tattoos Plaintiff inked?

Yes \_\_\_\_\_ (for Plaintiff)

No \_\_\_\_\_ (for Take-Two)

*Proceed to **Question 10.***

10. Do you find that the following Tattoos are copied from pre-existing material?

	<b>Yes</b> (for Take-Two)	<b>No</b> (for Plaintiff)
Gloria (on LeBron James's arm)	_____	_____
Lion (on LeBron James's chest)	_____	_____
Shoulder Stars (on LeBron James's arm)	_____	_____
Fire (on Danny Green's arm)	_____	_____
Scroll (on Danny Green's arm)	_____	_____
Brother's Keeper (on Tristan Thompson's chest)	_____	_____

*Proceed to **Question 11.***

11. Do you find that the following Tattoos employ standard images or themes?

	<b>Yes</b> (for Take-Two)	<b>No</b> (for Plaintiff)
Gloria (on LeBron James's arm)	_____	_____
Lion (on LeBron James's chest)	_____	_____
Shoulder Stars (on LeBron James's arm)	_____	_____
Fire (on Danny Green's arm)	_____	_____
Scroll (on Danny Green's arm)	_____	_____
Brother's Keeper (on Tristan Thompson's chest)	_____	_____

*Proceed to **Question 12.***

12. Do you find that the entirety of the Lion Tattoo appears in *NBA 2K*?

Yes \_\_\_\_\_ (for Plaintiff)

No \_\_\_\_\_ (for Take-Two)

*Proceed to **Question 13.***

13. Do you find that the entirety of the Brother's Keeper Tattoo appears in *NBA 2K*?

Yes \_\_\_\_\_ (for Plaintiff)

No \_\_\_\_\_ (for Take-Two)

*Proceed to **Question 14.***

14. Do you find that *NBA 2K* includes a reasonable amount of the Tattoos Plaintiff inked in light of Take-Two's purpose of showing the NBA Players as they look in real life?

Yes \_\_\_\_\_ (for Take-Two)

No \_\_\_\_\_ (for Plaintiff)

*Proceed to **Question 15.***

15. Do you find that, during ordinary gameplay, the Tattoos Plaintiff inked are observable in *NBA 2K*?

Yes \_\_\_\_\_ (for Plaintiff)

No \_\_\_\_\_ (for Take-Two)

*Proceed to **Question 16.***

16. Do you find that customers would purchase *NBA 2K* as a substitute for purchasing the Tattoos Plaintiff inked?

Yes \_\_\_\_\_ (for Plaintiff)

No \_\_\_\_\_ (for Take-Two)

*Proceed to **Question 17.***



17. Do you find that the depiction of the NBA Players with their tattoos in *NBA 2K* would garner interest in the original tattoos in full size?

Yes \_\_\_\_\_ (for Take-Two)

No \_\_\_\_\_ (for Plaintiff)

*Proceed to **Question 18**.*

18. Do you find that Plaintiff met his burden of showing there is a reasonable, traditional, or likely to be developed market for licensing the Tattoos Plaintiff inked for use in video games on the people who bear those tattoos in real life?

Yes \_\_\_\_\_ (for Plaintiff)

No \_\_\_\_\_ (for Take-Two)

*If you answered "YES" to **Question 18**, proceed to **Question 19**.*

*If you answered "NO" to **Question 18**, skip to **Question 20**.*

19. Do you find that the depiction of the Tattoos Plaintiff inked, in *NBA 2K* would cause substantial harm to a market for the Tattoos?

Yes \_\_\_\_\_ (for Plaintiff)

No \_\_\_\_\_ (for Take-Two)

*Proceed to **Question 20**.*

20. Do you find that allowing people with tattoos to be depicted realistically encourages or discourages the creation of new expression?

Encourage \_\_\_\_\_ (for Take-Two)

Discourage \_\_\_\_\_ (for Plaintiff)

*Proceed to **Question 21**.*

21. Is it more important to allow people with tattoos to be depicted realistically than the dollar amounts Plaintiff might have lost?

Yes \_\_\_\_\_ (for Take-Two)

No \_\_\_\_\_ (for Plaintiff)

*Proceed to **Question 22.***

**Take-Two's Other Defenses**

22. Do you find that Take-Two has proven by a preponderance of the evidence its *de minimis* use defense?

Yes \_\_\_\_\_ (for Take-Two)

No \_\_\_\_\_ (for Plaintiff)

*Proceed to **Question 23.***

23. Do you find that Take-Two has proven by a preponderance of the evidence its license defense?

Yes \_\_\_\_\_ (for Take-Two)

No \_\_\_\_\_ (for Plaintiff)

*Proceed to **Question 24.***

24. Do you find that Take-Two has proven by a preponderance the evidence its waiver defense?

Yes \_\_\_\_\_ (for Take-Two)

No \_\_\_\_\_ (for Plaintiff)

*If you answered "YES" to any of Questions 22, 23, **OR** 24, skip the remaining questions, proceed to the end of the verdict form, and execute the signature page.*

*If you answered "NO" to all of Questions 22, 23, **AND** 24, proceed to **Question 25.***

25. Do you find that Plaintiff's application for copyright registration for the following works contains inaccurate information that Plaintiff knew was inaccurate?

	<b>Yes</b> (for Take-Two)	<b>No</b> (for Plaintiff)
Gloria (on LeBron James's arm)	_____	_____
Lion (on LeBron James's chest)	_____	_____
Shoulder Stars (on LeBron James's arm)	_____	_____
Fire (on Danny Green's arm)	_____	_____
Scroll (on Danny Green's arm)	_____	_____
Brother's Keeper (on Tristan Thompson's chest)	_____	_____

*If you answered "YES" to any part of **Question 25**, proceed to **Question 26**.*

*If you answered "NO" to each part of **Question 25**, proceed to **Question 27**.*

26. For any of the works for which you selected "Yes" in Question 25, do you find the Copyright Office relied on those inaccuracies?

	<b>Yes</b> (for Take-Two)	<b>No</b> (for Plaintiff)
Gloria (on LeBron James's arm)	_____	_____
Lion (on LeBron James's chest)	_____	_____
Shoulder Stars (on LeBron James's arm)	_____	_____
Fire (on Danny Green's arm)	_____	_____
Scroll (on Danny Green's arm)	_____	_____
Brother's Keeper (on Tristan Thompson's chest)	_____	_____

Thompson's chest)

*If you answered "YES" to each part of **Questions 25 AND 26**, skip the remaining questions, proceed to the end of the verdict form, and execute the signature page.*

*If you answered "NO" to any part of **Questions 25 OR 26**, proceed to **Question 27**.*

27. Do you find that Plaintiff incurred any actual damages attributable to Take-Two's use of the Tattoos in *NBA 2K*?

Yes \_\_\_\_\_ (for Plaintiff)

No \_\_\_\_\_ (for Take-Two)

*If you answered "YES" to **Question 27**, proceed to **Question 28**.*

*If you answered "NO" to **Question 27**, skip to **Question 29**.*

28. What is the dollar amount of actual damages that you find that Plaintiff is entitled to recover from Take-Two's use of the works for which you selected "YES" in response to both Question 1 and Question 2?

\$ \_\_\_\_\_

*Proceed to **Question 29**.*

29. Do you find that any of Take-Two's profits are attributable to the Tattoos Plaintiff inked and are not taken into account with actual damages?

Yes \_\_\_\_\_ (for Plaintiff)

No \_\_\_\_\_ (for Take-Two)

*If you answered "YES" to **Question 29**, proceed to **Question 30**.*

*If you answered "NO" to **Question 29**, skip the remaining questions, proceed to the end of the verdict form, and execute the signature page.*

30. What is the dollar amount of Take-Two's profits that you find that Plaintiff is entitled to recover from Take-Two's use of the Tattoos Plaintiff inked?

\$ \_\_\_\_\_

You have reached the end of the verdict form and should review it to ensure it accurately reflects your unanimous determinations. Each juror should then sign and date the verdict form in the spaces below and notify the Marshal that you have reached a verdict.

*Each juror should place his or her signature on the lines below.*

I attest that the foregoing accurately reflects the jury's decision.

1. \_\_\_\_\_  
Foreperson

2. \_\_\_\_\_

3. \_\_\_\_\_

4. \_\_\_\_\_

5. \_\_\_\_\_

6. \_\_\_\_\_

7. \_\_\_\_\_

8. \_\_\_\_\_

9. \_\_\_\_\_

10. \_\_\_\_\_

11. \_\_\_\_\_

12. \_\_\_\_\_

Dated: \_\_\_\_\_, 2023

*You are finished. Please provide this completed form in a sealed envelope to the Marshal.*